ECONOMIC AND COMMUNITY DEVELOPMENT OPPORTUNITIES FOR MINE-SCARRED LANDS

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ABSTRACT

On January 11, 2002, the Federal Brownfields Revitalization and Environmental Restoration Act of 2001 was enacted. The act codifies a federal brownfields program and authorizes $250 million annually in grants and loans including $50 million to be distributed to state and tribal response programs. In addition, the law provides funding for cleanup and assessment activities and also clarification of federal liability.

Historically, brownfields have been viewed as vacant industrial and commercial properties where perceived or real environmental contamination complicates redevelopment. The new federal brownfields law expands this definition to include most property types, including mine-scarred lands. By including mine scarred lands in the definition, abandoned mine lands will benefit from applicable provisions of the brownfields law, and may also be eligible for an array of cleanup and redevelopment resources provided by agencies such as the U.S. Economic Development Administration and the U.S. Department of Housing and Urban Development. These and other resources provide new opportunities to address mine sites that have economic and community development potential.

As part of the U.S. EPA's current activities to implement the new law, work has begun on issues including defining the term "mine scarred land," developing related guidance, and identifying types of technical assistance to cleanup and develop mine scarred lands in the brownfields context.

The proposed paper and technical session to be presented at the 2002 NAAMLP Annual Conference is a key initial step in information exchange between the brownfields and mine reclamation communities as they collaborate to implement brownfields programs. The paper and technical session will achieve the following: 1) provide a historical background on the evolution of brownfields policy and its linkage to mine reclamation: 2) describe the various financial and technical resources that are available for brownfield redevelopments: 3) based on case study research, suggest general criteria for using a brownfield redevelopment approach at selected mine sites: 4) provide a basic explanation of how state and tribal response programs may benefit from the legislation; and 5) request input on a number of technical and policy items from NAMLP members through a survey.

INTRODUCTION

The period from December of 1980 to December of 2001 witnessed a shift in public approaches to blighted and contaminated lands in the United States from an orientation towards environmental cleanup and federal control to economic reuse and state and tribal empowerment. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), more commonly known as Superfund, was passed in 1980. Twenty-one years later, the enactment of the Brownfields Revitalization Act of 2001 marks an adaptation of a comprehensive federal system of ranking hazardous sites and addressing cleanup through federal lawsuits and a massive national fund to a framework of liability clarification, incentives and

financial assistance for encouraging parties involved with blighted lands to collaborate with government.

This shift is also characterized by a broader definition of brownfields—one that recognizes underutilized and possibly contaminated properties as not only an urban epidemic but also a rural one. Over the last several years, a standard definition of brownfields has been "abandoned, idled or underutilized industrial and commercial sites where expansion or redevelopment is complicated by real or perceived environmental contamination."[1] The recently enacted brownfields law adds to this definition and broadens it to include specific property types including mine-scarred lands. The inclusion of mine-scarred lands in the federal statutory definition of brownfields provides new economic and community development opportunities for former mine sites and may be viewed as an important step in broadening the ways in which mine reclamation and economic development officials approach mine lands with community and economic development potential.

As an initial step in the information exchange between the brownfields and mine reclamation communities, this paper: provides background on the evolution of brownfields policy and its linkage to mine reclamation; provides a basic explanation of how state and tribal response programs may benefit from the legislation; describes the various financial and technical resources that are available for brownfield redevelopments; offers brief examples of local community and brownfield revitalization approaches; and recommends areas for further exploration, analysis, and outreach.

BROWNFIELDS POLICY BACKGROUND

In the years that followed the passage of CERCLA and the establishment of the Superfund program, it became increasingly evident to communities and policy makers, that although the program demonstrated success in assigning liability and generating some resources for cleanup, the pace and costs of cleanup were not proportional to the number of sites that were given Superfund status and the funding needed to remediate them. According to a 2001 American Bar Association publication, only about 1,250 of the nation's hundreds of thousands of contaminated sites are included on the National Priorities List, a compilation of the nation's most hazardous sites.[2]

In countless instances, properties that present environmental difficulties also become economic problems. The cost of cleanup and fears of past or future liability drive away investment, causing communities to suffer job loss, real estate value depreciation, and general degradation. Existing or potential environmentally catastrophic properties become economically obsolete and plague both urban and rural communities across the nation. The U.S. Government Accounting Office estimates that there are 130,000 to 450,000 contaminated commercial and industrial sites around the country.[3]

U.S. Environmental Protection Agency Region 5 Office of Public Affairs, Basic Brownfields Fact Sheet (1996).

[2] Davis, Todd S., et al Brownfields: A Comprehensive Guide to Redeveloping Contaminated Properties. American Bar Association, 2002, p. 7.

[3] Government Accounting Office, GAO/RCED-95-172, Community Development – Reuse of Urban Industrial Sites (1995).

To address this problem, the U.S. Environmental Protection Agency, with direction and support of the Clinton Administration, undertook an initiative to engage stakeholders in the issues surrounding brownfields. Agency executives and policy-makers recognized that, under the Superfund system, hundreds of thousands of properties with real or perceived environmental complications would continue to be economic problems as long as environmental conditions and potential liability were unknown.

In 1993, the EPA established the Brownfields Redevelopment Initiative. This initiative has been supported by a pilot program in which local government units apply for federal funds to inventory and assess brownfields sites and to create the public-private partnerships necessary to break down barriers to reuse and encourage reinvestment. The pilot program began with the designation of a handful of pilot cities that were provided with financial and technical assistance to address brownfields sites.[4] Success was documented in those initial cities and the pilot effort has since grown to a program with over 350 pilot communities in which activities include site assessment, environmental remediation job training, and revolving loan funds for cleanup. To date, the EPA Assessment Demonstration Pilot Program has documented substantial results. An average EPA grant of $200,000 has leveraged $1 million in other funds and a total of $4.2 billion has been leveraged from outside sources. Additionally, redevelopment activities are underway at 470 properties, and 20,600 new jobs have been created on brownfield sites.[5]

These results undoubtedly contributed to the support necessary to ensure the passage of the Brownfields Revitalization Act of 2001—a bill that passed the U.S. Senate by a vote of 99-0 and was signed by President Bush on January 11, 2002.[6] The new brownfields law codifies a federal brownfields program and moves it beyond "pilot" status. The passage of the law provides for a number of upgrades from the pilot program. In its most recent years, the brownfields pilot program provided approximately $90 million in federal funds, while the new law authorizes $250 million a year in funding until 2006. While pilot grants were made to a limited number of states and tribes, $50 million of the $250 million authorization under the new law must be used to enhance state and tribal response programs. The greatest change involves funding for site cleanup. The majority of pilot program funding had been allocated to assessment with a relatively small amount used to capitalize revolving loan funds for cleanup. However, the new law provides grants of up to $500,000 for cleanup and makes premium costs for environmental insurance an eligible expenditure.[7]

In addition to increased and more flexible funding, Subtitle B of the new law provides important liability protections. These protections are in three general forms: protection to properties contiguous to CERCLA sites, protection to prospective purchasers, and protection to innocent landowners. The intent is to provide parties with the legal comfort to become active in helping move properties into productive use. As part of the law's provisions for state and tribal response programs, Subtitle C provides a federal enforcement bar, thus deferring responsibility to state and tribal programs when the state or tribe has met the federal law's requirements that it

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[4] Fields, Timothy J., Former Assistant Administrator of the USEPA for the Office of Solid Waste and Emergency Response. Personal interview. 30 Mar. 2002.

[5] Brownfields Management System. Information Database. Marasco Newton Group Ltd., Arlington, VA.

[6] H.R. 2869, 107th Cong., 1st Sess. (2001) available at http://thomas.loc.gov

[7] Environmental insurance coverage can provide a cost cap for cleanup and liability protection and has been a useful tool for both public and private entities involved in brownfields reuse. Yount, Kristen R. Environmental Insurance Products Available for Brownfields Redevelopment, 1999. Northern Kentucky University, KY, 1999.

maintain and make public a list of sites at which response actions have been taken or are planned. With the federal funding provided, state and tribal response programs may select from eligible activities which include using funds to establish or enhance a response program, capitalize a cleanup revolving loan fund, and purchase or develop a risk sharing pool, an indemnity pool, or other mechanisms to provide financing for response actions.

THE BROWNFIELDS LAW AND MINE RECLAMATION

In addition to the broad accomplishments of the law in the areas of creating a grant program, clarifying liability, and addressing state response programs, the brownfields law provides opportunities for communities challenged by abandoned mine lands or mine-scarred lands. In defining brownfield sites, Subtitle A of the Brownfields Revitalization Act of 2001 states "IN GENERAL- The term 'brownfield' site means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence of hazardous substance, pollutant, or contaminant." Additionally, the law explains that, "the term 'brownfield' site includes a site that—(III) is mine-scarred land."[8] With the inclusion of mine-scarred land in the brownfields definition comes the eligibility for all relevant provisions of the brownfields law including eligibility for federal funding to assess and potentially redevelop mine-scarred lands.

In addition to funding provided by EPA, by being defined as a "brownfield" provides mine-scarred sites with greater access to the resources committed by the National Brownfields Partnership, an interagency workgroup made up of a number of federal agencies including, but not limited to, the U.S. Economic Development Administration (EDA), the U.S. Department of Housing and Urban Development (HUD), the Appalachian Regional Commission (ARC), the U.S. Department of Agriculture's Rural Development (USDA RD), and the Department of the Interior's Office of Surface of Mining (OSM).[9] Through the National Brownfields Partnership, agencies participate in a formal dialogue on how they can collaborate to ensure that communities and landholders are able to navigate through the brownfields cleanup and redevelopment process with limited bureaucratic difficulties. Additionally, through the National Brownfields Partnership Action Agenda, member agencies make a commitment of tangible financial and technical resources to brownfields reuse.[10]

The resources and commitment from various federal agencies apply to all communities embarking upon brownfields redevelopment, including those communities blighted by mine-scarred lands. In those instances when a community possesses one or more abandoned mine sites where there is legitimate reuse potential, an array of resources may be assembled to not only reclaim the mine site to adequate environmental standards, but also to generate economic expansion, diversification, job growth, and better land use. Essentially, communities can harness the brownfields resources to make what would otherwise be a financially unfeasible redevelopment project possible and potentially profitable.

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[8] The Brownfields Revitalization Act of 2001, Title II of the Small Business Relief and Brownfields Revitalization Act, H.R. 2869, 107th Cong., 1st Sess. (2001).

[9] United Stated Environmental Protection Agency, The Brownfields National Partnership Action Agenda Accomplishments Report, November 1999.

[10] Ibid.

COMMUNITY AND ECONOMIC DEVELOPMENT APPROACHES TO ABANDONED MINE SITESS

Taking steps above and beyond the environmental restoration of mine sites may mean the inclusion of community and economic development related strategies into reclamation plans. Outcomes on these sites might involve the creation of new employment opportunities, economic diversification of the local economy, and the creation of community assets such as parks or learning centers. Additional steps may involve reclaiming and investing in sites in ways that more easily and efficiently accommodate future development. Creating level, developable parcels, maintaining mining access roads to be converted into industrial or commercial access roads, and installing basic utilities are practices which add value to sites and make them marketable to public and private investors interested in locating residential, commercial, industrial, or institutional developments. Obviously, not every abandoned mine site can be redeveloped into an industrial park or residential development. Additional infrastructure investments to attract future development are only practical for those limited number of mining sites that are within a reasonable distance of stable population centers and adequate transportation corridors.

The choice to pursue future opportunities for abandoned mine sites may be entirely up to the community that has mine-scarred lands within its reach. Communities as small as 500 residents may identify the needs for new job opportunities and in the rugged terrain of Appalachia, for example, a shelved out mine site may be the only place to locate a light manufacturing facility that will provide 100 full time employment positions. Indeed, communities all over Appalachia are struggling with the challenges of economic restructuring now that the natural resource-based aspects of their local economies have waned. The same is true for mining communities in other areas of the United States.[11]

In its most basic form, community development centers on creating assets for places that otherwise lack them. In areas with limitations on developable land and challenging topographical and geological features, creating places for economic expansion can be cost-prohibitive. However, the existing reality that most private mining interests incur the costs to access and excavate land combined with the potential that communities can harness federal and state resources through brownfields and economic development programs, abandoned mine sites may be strong candidates for the site of new economic development. In many ways, brownfields status enables some agencies to do more than they could on an untouched green field. Virginia Department of Housing and Community Development Community Development Block Grant (CDBG) Director, Todd M. Christensen explains, "by being a labeled as a brownfield and therefore being considered a blighted property, we are able to assist local governments in addressing the blight and investing in future of the site in ways we could not if the property were not seen as a brownfield."[12]

Government entities like Virginia's community development agency are increasingly recognizing the community development potential of working with localities on abandoned mine

[11] Johansen, Harley. "Mining to Tourism: Economic Restructuring in Kellogg, Idaho." Local Economic Development: a geographical comparison of rural community restructuring. New York: United Nations University Press, 1998.

[12] Christensen, Todd M., Personal Interview. 2 July, 2002.

sites. While some are adapting long time established programs such as CDBG to meet the needs of mining communities, others are formulating new policies to address these issues. The West Virginia state legislature recently enacted the Coalfield Community Development Act which directs the state Development Office to do more than restore sites to their previous condition, but to incorporate long term land use plans and economic development strategies recommended by redevelopment authorities into the reclamation plans of surface mining permits.[13] These initiatives in Virginia and West Virginia demonstrate that policy-makers and program administrators alike are seeing the need to integrate long-term economic development into mine reclamation.

RESOURCES FOR BROWNFIELDS AND MINE-SCARRED LANDS

The label of "brownfield" no longer carries only a stigma. With the label comes an array of resources that can be used to redevelop brownfields into economic engines. The resources available to brownfields in general and mine-scarred lands specifically can be categorized into three broad categories: tax and financial incentives, direct funding assistance, and limitations on government intervention. The Federal Brownfields Tax Incentive, signed into law in 1997, enables parties who undertake cleanup on a brownfield site to fully deduct the cost of cleanup in the year that costs were incurred.[14] A number of states also offer various types of state tax incentives for cleaning and redeveloping brownfields.[15] Federal brownfields grant funds can also be used to purchase or subsidize the cost of environmental insurance products. These innovative products offered by the likes of AIG Environmental, ECS, Inc., Kemper Environmental, Zurich-American, and other insurers are used to provide cleanup cost overrun protection, pollution liability protection, or other types of coverage. Financial tools such as tax incentives and insurance are often the necessary to make a brownfields deal feasible.

In addition to the direct assessment and cleanup grants now authorized under the Brownfields Revitalization Act of 2001, funding for assessment, cleanup and redevelopment is available from a number of other sources. HUD administers the Brownfields Economic Development Initiative (BEDI), which has been funded at $25 million in both of the last two years.[16] BEDI grants can be used for economic development projects sited on brownfields and are typically coupled with loan financing through the Section 108 loan program.[17] Brownfield sites may also qualify for HUD's Economic Development Initiative (EDI), a program funded at more than $300 million in 2002, which provides assistance to broadly defined economic development projects.[18] By being grouped with brownfields and HUD's definition of "blight,"

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[13] West Virginia Development Office, Office of Coalfield Community Development. Available at: http://www.wvdo.org/index.cfm?main=/technology/index.

[14] U.S. Environmental Protection Agency, Brownfields Tax Incentive Fact Sheet, August 2001. Available at: http://www.epa.gov/brownfields/bftaxinc.htm#about

[15] Bartsch, Charles. Brownfields: State of the States. Northeast-Midwest Institute. Fourth Annual Edition, Nov. 2001.

[16] U.S. Dept. of Housing and Urban Development. Office of Community Planning and Development. Available at: http://www.hud.gov/offices/cpd/economicdevelopment/index.cfm

[17] If passed by Congress and signed by the President, H.R. 2941 will decouple BEDI from Section 108 loan funds and make the BEDI program more accessible for smaller communities.

[18] U.S. Dept. of Housing and Urban Development. Office of Community Planning and Development. Available at: http://www.hud.gov/offices/cpd/economicdevelopment/index.cfm

mine-scarred redevelopment projects that eliminate blighting influences or create benefits to low- to-moderate income individuals, are eligible for the Community Development Block Grant Program (CDBG), a $4.4 billion annual program that addresses the housing, infrastructure, and economic needs of communities. CDBG is one of the largest, most flexible grant programs in the federal government and is considered discretionary funding, therefore enabling it be used as a non-federal match for the funding requirements of some federal programs.[19]

Other members of the National Brownfields Partnership have also committed resources to assist in brownfields reuse. The U.S. Economic Development Administration (EDA) provides a number of initiatives to help communities develop economic adjustment strategies, install critical infrastructure, or provide workforce development facilities to serve existing or new industrial sectors. Of particular interest to many mining communities, are the offerings of the United States Department of Agriculture's Rural Development and the Appalachian Regional Commission. Both agencies have numerous initiatives designed to assist rural communities and each agency is a member of the Brownfields National Partnership. In addition to the host of federal resources available, many states provide brownfields redevelopment programs and general industrial development and community revitalization assistance.

While public funding has proved to be essential in many brownfields redevelopment projects, many more brownfields revitalization projects owe their success to the liability clarification that is provided to developers of brownfields sites. For several years, EPA and its state equivalents have issued some form of clarification to brownfields owners and communities that fully participate in assessment and, when necessary, cleanup programs. This clarification often comes in the form of "No Further Action" letters. These letters essentially state that the EPA or state enforcement agency will take no further action against a party for past pollution. For those states that meet criteria for state response programs outlined in the brownfields law, a federal enforcement bar applies giving brownfields party owners confidence that if state cleanup requirements have been met, they will not be subject to additional U.S. EPA intervention.[20] This general deference to state enforcement roles over the U.S. EPA's responsibilities are reflected in most of the memorandum of agreements (MOAs) that EPA has signed with nineteen states.[21] Limitations on the federal government's role in enforcement on brownfields cleanups and the liability clarifications provided in the new law combined with liability protections and amnesty that applicable state statues may grant, help provide parties with the comfort and confidence that they may need to move forward on brownfield and abandoned mine site redevelopment projects.

MINE-SCARRED LAND REVITALIZATION: EXAMPLES AT THE LOCAL COMMUNITY LEVEL

Despite the reality that protections, incentives, and funding for brownfields revitalization are relatively new both to the area of abandoned real estate reuse in general and more specifically to mine-scarred lands, there are instances throughout the United States where communities have

[19] Ibid. CDBG Guidance.

[20] The Brownfields Revitalization Act of 2001 identifies a number of exceptions to the state enforcement bar in order to give the U.S. EPA the ability to respond if a site presents a significant threat to health and human safety.

[21] U.S. Environmental Protection Agency, Memorandum of Agreements on State Voluntary Cleanup Programs. Available at: http://www.epa.gov/brownfields/html-doc/statemoa.htm.

realized the potential of abandoned mine sites. Though standard research methodologies do not readily reveal data on communities where mine sites have been redeveloped into assets such as industrial parks, community centers, or housing developments, practical experiences in the field of community development do identify cases where economic and community development approaches have been taken to address mine sites.

Within the 420 square-mile Backlick Creek Watershed in Pennsylvania, a population of 70,000 people is dispersed along with numerous abandoned coal mine sites.[22] One community in particular, Vitondale, Pennsylvania has reclaimed an abandoned mine site into a recreational area that has received national attention for the integration of the land's mining past with hiking, picnic and landscaping characteristics. The site's central feature is a stream of acidic water that percolates out of the mine and flows down a limestone lined canal into aerating basins and finally to a wetland. Alongside the water's path a "litmus garden" made up of rows of various vegetation types are programmed so that their autumnal colors reflect the water's purifying stages as it becomes less acidic.[23] The park is a community asset that serves not only Vitondale residents, but also draws visitors, thus having positive economic impacts on the community.

In Jefferson County, Ohio, the initial phases of an industrial park were completed at a former surface mine in 1998. After an aggressive recruitment effort and collaboration by federal, state, and local officials to assemble the necessary infrastructure funding and incentives, Wal-Mart Inc. announced its plans to construct an 880,000 square-foot distribution center on the 150-acre site. The facility will cost $75 million to construct and is expected to create 600 new jobs for the Ohio Valley—a region that has suffered job loss in recent decades due to the decline of the steel industry.[24]

While Vitondale, Pennsylvania, and Jefferson County, Ohio represent two diverse site-specific reuses for mining sites, the Town of Kellogg, Idaho has and continues to incorporate the redevelopment of its many mine-scarred sites into its long-term strategy of economic restructuring. Until 1982, Kellogg was the site of largest smelter and mine complex in the region and was a thriving industry community.[25] Following closure of the Bunker Hill Mining and Smelter Company, the U.S. EPA designated the smelting facility and many of its accompanying mines as a superfund site. Over the last decades, Kellogg has been working with federal and state agencies as well as economic development consultants to devise and carryout an economic restructuring strategy that involves positioning Kellogg as a tourist destination and developing a light-manufacturing base. Many of the community's former mining sites have become prime candidates for the location of new manufacturing and tourist related operations. Cleanup and redevelopment is completed, underway, or planned at a number of former mining sites.[26] The examples of Kellogg, Idaho, Vitondale, Pennsylvania, and Jefferson County, Ohio are a few instances of mine-scarred land redevelopment efforts. Undoubtedly, through their daily work, mine reclamation and community development practitioners are aware of many other instances where former mine sites have been reused for economic or community development purposes.

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[22] Ferguson, Bruce K. "Regional Priorities for Abandoned Mine Reclamation in the Backlick Creek Watershed," Journal of Environmental Management. Oct. 84: 249-259.

[23] Time.Com. Innovators: Architecture and Design. http://www.time.com/time/innovators/design/profile_bargmann2.html

[24] Alliance 2000. "Annual Report" for 2001. Available at. http://www.alliance2000.org/annualreport2001.pdf, page 2.

[25] Johansen, Harley. "Mining to Tourism: Economic Restructuring in Kellogg, Idaho."

[26] Ibid.

FUTURE STEPS FOR BROWNFIELDS APPROACHES TO MINE-SCARRED LANDS

Two primary forces should continue to drive brownfields redevelopment approaches to mine-scarred lands. The first is the broad information sharing and outreach that has been and will continue to be associated with brownfields redevelopment. Energy associated with implementation of the new law and the federal resources that it makes available should continue to assist various stakeholders in better understanding and promoting brownfields redevelopment. One of the great strengths of the brownfields reuse movement has been the broad support it has enjoyed by economic development, environmental, urban planning, real estate development, and other groups. While top down information dissemination will continue to help promote brownfields redevelopment in general and for mine-scarred lands specifically, the second driver of mine-scarred reuse is likely to come from local practitioners. The ingenuity, energy, and commitment of local reclamation and economic development practitioners must continue to be harnessed to increase the likelihood that suitable mine sites are redeveloped.

To help accelerate mine-scarred land redevelopment, it is recommended that further steps be considered. First, at the national policy level, participant agencies in the National Brownfields Partnership with roles in rural development, mine reclamation, and economic development should begin a dialogue to discuss how each agency may commit both financial and technical resources to assist local practitioners in their efforts to reuse abandoned mine lands. Through communication tools that promote the use of relevant agency funding for mine redevelopment and through a commitment of financial resources to enable practitioners to be pioneers and "test pilot" brownfields reuse approaches to mine redevelopment, agencies such as HUD, USDA, EDA, ARC, EPA, and OSM can become active partners with communities seeking to take full advantage of all local assets—including mine-scarred lands.

To assist practitioners in understanding the feasibility of mine land redevelopment, federal and states agencies as well as stakeholder groups may consider providing the resources to conduct an analysis of the factors affecting mine redevelopment. These factors include, but are not limited to: the number or percentage of sites that are located within a reasonable distance of adequate labor forces, utilities, and transportation corridors; the financial and environmental costs of streamlining economic development related investments such as site clearing and infrastructure construction into the reclamation process; and the extent to which financial resources available from the public sector can subsidize the cost of redevelopment in order to make mine redevelopment economically feasible.

Though increases in formal technical analysis, public sector collaboration, and information sharing are necessary for mine land redevelopment opportunities to reach their full potential, one of the first and most critical steps is recognition by the mine reclamation and the community and economic development fields that mutual benefits can be gained by working together on the redevelopment of mine-scarred lands. The Brownfields Revitalization Act of 2001 encourages these two fields to collaborate, and the resources provided by federal and state programs and local practitioners represent the array of tools necessary to make mine land redevelopment encompass community and economic development outcomes.